IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) CIVIL WRIT No. 1686 of 2007

SANWATA RAM
V/S
M.D.,J.C.C.B. & ORS.

(2) CIVIL WRIT No. 1685 of 2007

BAL KISHAN
V/S
M.D.,J.C.C.B. & ORS.

(3) CIVIL WRIT No. 1687 of 2007

BHARTA RAM & ANR.
V/S
M.D.,J.C.C.B. & ORS.

Mr. RK THANVI, for the appellant / petitioner

Mr. RAJESH JOSHI, for the respondent

Date of Order : 3.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

These three matters arise in common circumstances, and involve common question of fact and law, and are, therefore, being decided by this common order.

By the impugned order, the learned trial court has allowed the application of the defendant under Order 8 Rule 1(ka)(3) read with Section 151 C.P.C., and has ordered to take on record the five documents mentioned in the

application dt. 19.10.2006, being Jamabandi Khata number 395 and Khata No. 386, New Naksha of certain Khasra numbers, the Settlement Department's document about comparative chart, then a site plan of old Khasra number 520, and the adjoining khasra numbers 291/25, 291/22, 521/3, 521/2 etc., so also the measurement plan issued by the Revenue Department on 24.10.96, regarding Khasra number 291/25, 291/22, 521, and 520, and of National Highway Number 15.

Arguing the writ petition, it was contended that in the earlier remand order, though additional issues have been framed, and the matter had been remanded, still the defendant did not produce any evidence, and the suit was decreed. Then, again the matter was remanded, giving opportunity to the defendant to lead evidence, but then, the defendant was not permitted to lead any documentary evidence, and since the documents are required to be filed before settlement of issues, the defendant had no right to file documents subsequently, and therefore, the impugned order is liable to be set aside. According to the learned counsel, the impugned order suffers from jurisdictional error, when it permits the documents to be taken on record. Learned counsel for the petitioner relied upon two judgments of this Court, in Chandanmal Vs. Rawatmal reported in AIR 1980 Rajasthan-139, and Chote Lal Vs. Kalyan Prasad, reported in 1986 RLW-363.

Learned counsel for the respondent, on the other hand, supported the impugned order.

I have considered the submissions.

I may first take up the cases cited by the learned counsel for the petitioner. A look at Chandanmal's judgment shows, that therein the matter was remanded by the High Court to the first Appellate Court with a direction, that it should allow the plaintiff an opportunity to cross-examine the witness of the defendant, and then dispose of the appeal afresh. It was in this background, that it was found, that the learned Appellate Court was right in refusing the prayer for examining the evidence of the experts. So far Chote Lal's case is concerned, therein the principles were laid down, that where the matter is remanded under Order 41 Rule 23-A, and when the order of the Appellate Court is plain and simple, contemplating retrial of the suit, the trial court can exercise all the powers which it has, for the disposal of a suit, during the original trial. But then, where the order of remand is with a specific direction, or for specific purpose, then it is not open to the court to proceed, as if there are no restrictions on its powers, and then it has to act according to the specific directions. In this case the judgment in Chandanmal's case was considered. This was a

case where the Appellate Court accepted the application under Order 41 Rule 27, and a particular document was ordered to be taken in evidence, and the parties were allowed to lead evidence in proof of the document, as well as in rebuttal to this evidence, and thereafter the learned trial court was to give a fresh decision. This was construed to be specific direction to proceed in a specific manner, and was not treated to be an open remand.

Keeping in view the principles propounded in the two judgments mentioned above, a look at the order of remand shows, that the learned Appellate Court had set aside the judgment and decree of the learned trial court and remanded the matter to the learned trial court for re-hearing, with a direction to give sufficient opportunity of leading evidence to the defendant, and thereafter to decide the suit afresh, on the basis of the evidence of the parties.

In my view, even on the principles propounded in Chote Lal's case and Chandanmal's case, it cannot be said, that the remand order restricted the powers of the learned trial court in taking documents on record. The defendant is given opportunity to lead evidence, which obviously included oral evidence, as well as documents. True it is, that documents can be produced before settlement of issues only, but then since that opportunity had been lost, the

defendant could not produce the documents on record, simply by invoking an indefeasible right to lead documentary evidence as well, taking the shelter of the remand order, and was required to follow the requisite procedure of law, which could permit the learned trial court to exercise discretion in allowing the document to be taken on record, if appropriate case is made out, and accordingly the present application had been filed. Thus, it cannot be said that the learned trial court lacks jurisdiction, or that the defendant was not completely debarred from leading any documentary evidence, even by following procedure of law.

In this background a look at the documents, and their nature, shows that they are very relevant, and have material bearing on the controversy involved, and this precisely what has been found by the learned trial court.

In my view, may be that the learned trial court might have thought it proper not to take the documents on record, in exercise of its discretion, but then when the discretion has been exercised to take them on record, I do not find any ground to interfere with the exercise of discretion.

These writ petition are, therefore, dismissed summarily.

(N P GUPTA),J.

/sushil/